

United States Senate

WASHINGTON, DC 20510

February 17, 2017

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The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai,

Congratulations on your appointment as Chairman of the Federal Communications Commission (FCC). We write regarding your recent comments about how the FCC can help protect consumers from receiving unwanted and intrusive robocalls, robotexts, and telemarketing calls. During a recent Consumer Advisory Committee meeting, you reportedly discussed a number of solutions to help address this problem, including increased enforcement action and reconsidering the Broadnet et al. Declaratory Ruling. We appreciate these statements, and we encourage you to take strong actions to protect consumers from unwanted calls and texts.

When Congress passed the Telephone Consumer Protection Act (TCPA) of 1991, one goal was clear: consumers should not be subject to unwanted robocalls, robotexts, and telemarketing calls. While the law has worked to successfully block countless unwanted calls and texts, consumer complaints related to the TCPA remain among the most received by the Federal Trade Commission (FTC) and the FCC. In FY 2016 alone, the FTC received over 5.3 million complaints about unwanted calls, while unwanted calls continue to be a top consumer complaint at the FCC.¹

In speaking about unwanted calls at the FCC's Consumer Advisory Committee meeting, you were quoted as saying, "the problem is only getting worse and that's why I hope the Commission will take aggressive action, hopefully with your counsel, to end it."² We agree, and believe that increased action – including increased enforcement action, maintaining protections against federal debt collectors, and preserving the current interpretation of autodialer – could help provide consumers much needed relief. We are very pleased that you are committed to addressing this pressing consumer protection issue, and strongly encourage you to take the "aggressive action" needed to stop unwanted calls.

During the Committee meeting, you also reportedly raised the possibility of reconsidering the FCC's 2016 Broadnet et al. Declaratory Ruling. The Broadnet et al. Declaratory Ruling formally exempted government contractors from complying with the TCPA's core consumer protections.

¹ "National Do Not Call Registry Data Book for Fiscal Year 2016." Federal Trade Commission, Dec. 2016. Web. 27 Jan. 2017. <<https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2016>>.

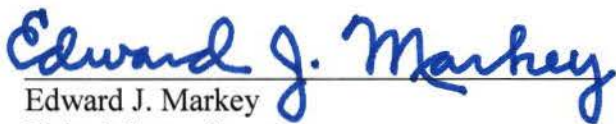
"Unwanted Calls." Federal Communications Commission, 17 Jan. 2017. Web. 29 Jan. 2017. <<https://www.fcc.gov/unwanted-calls>>.

² McGill, Margaret Harding. "FCC's Pai Calls for 'aggressive action' against Robocalls." Politico. N.p., 27 Jan. 2017. Web. 16 Feb. 2017. <<https://www.politicopro.com/tech/whiteboard/2017/01/fccs-pai-calls-for-aggressive-action-against-robocalls-082963>>.

We strongly oppose the Broadnet et al. Declaratory Ruling and believe that it was Congress's intent for the TCPA's protections to extend to government contractors. We encourage you to grant the petition for reconsideration and rescind the Broadnet et al. Declaratory Ruling without delay. We must ensure that government contractors are subject to meaningful rules that prohibit them from violating the consumer protections established by the TCPA.

Thank you for your attention to this important matter. We respectfully request that you provide a written response by March 9, 2017, detailing what efforts you will take to protect consumers from unwanted robocalls, robotexts, and telemarketing calls. If you have any questions, please have a member of your staff contact Daniel Greene of Senator Markey's office at 202-224-2742.

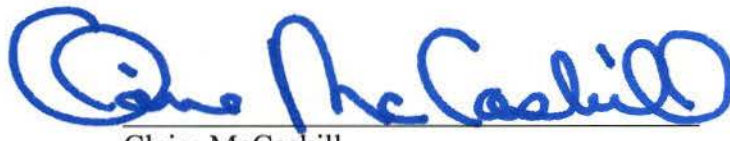
Sincerely,


Edward J. Markey
United States Senator


Al Franken
United States Senator


Jeffrey A. Merkley
United States Senator


Robert Menendez
United States Senator


Claire McCaskill
United States Senator


Richard Blumenthal
United States Senator


Tom Udall
United States Senator


Amy Klobuchar
United States Senator


Ron Wyden
United States Senator



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

Americans are suffering from a scourge of robocalls. As you note, each and every year, unwanted robocalls are a top consumer complaint at the Commission. It is estimated that American consumers received approximately 2.4 billion robocalls per month in 2016. One particularly pernicious category of robocalls is spoofed robocalls, in which the Caller ID is falsified, hiding the caller's true identity. Scammers use spoofing to disguise their identities, to trick consumers into answering unwanted calls, and to hide from authorities.

In order to better protect subscribers from illegal and fraudulent robocalls, I have circulated a Notice of Proposed Rulemaking to my fellow Commissioners that proposes to allow service providers to block illegal and fraudulent robocalls under certain circumstances, without fear of liability for failing to complete the calls. Specifically, the proposed rules, if adopted, would codify the FCC Consumer and Governmental Affairs Bureau's clarification in 2016 that providers are allowed to block spoofed robocalls when the subscriber to a particular telephone number requests that calls originating from that number be blocked (sometimes called "Do-Not-Originate"). The proposed rules would also permit providers to block spoofed robocalls when the caller uses an unassigned or invalid phone number. We are also seeking public input on how to address spoofing from internationally-originated numbers, where scammers too often manage to avoid U.S. legal process.

Additionally, I have proposed a Notice of Inquiry that would seek comment on whether and how to create a safe harbor that would protect consumers by allowing their providers to prevent fraudulent, illegal, or spoofed robocalls based on objective criteria. It would also seek comment on safeguards the Commission should establish to minimize blocking of lawful calls.

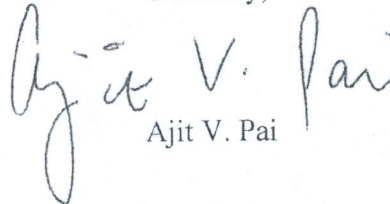
These proposals are tentatively scheduled for consideration at the Commission's upcoming Open Meeting on March 23, 2017. In accordance with my recent pilot project to bring more openness and transparency to the FCC, we have publicly released the draft text of this item

and a one-page fact sheet, each of which is available at <https://www.fcc.gov/news-events/events/2017/03/march-2017-open-commission-meeting>.

With respect to the *Broadnet* decision, I agree with you that that the previous Commission erred in finding that federal contractors are not “persons” subject to the TCPA. This conclusion is inconsistent with the text and structure of, and Congressional intent underlying, the TCPA. Moreover, as a policy matter, it gave federal contractors a special carve-out from those restrictions. (To be sure, federal contractors may be entitled to immunity from TCPA liability that derives from the government. Yet as I wrote in my dissent to this aspect of the *Broadnet* decision, I believe that’s a matter for the courts and Congress to decide—not the Commission.) We are now considering the Petition for Reconsideration, and in particular, the legal arguments advanced by various petitioners. As we do so, we will make every effort to ensure the Commission interprets the TCPA faithfully and in a way that doesn’t bestow regulatory largesse upon certain types of robocallers.

I appreciate your interest in this matter and I look forward to working with you as we pursue the common goal of protecting consumers from robocalls. Please let me know if I can be of any further assistance.

Sincerely,

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Al Franken
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Franken:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

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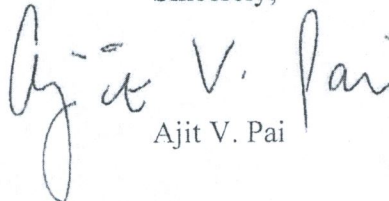
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I appreciate your interest in this matter and I look forward to working with you as we pursue the common goal of protecting consumers from robocalls. Please let me know if I can be of any further assistance.

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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Klobuchar:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

Americans are suffering from a scourge of robocalls. As you note, each and every year, unwanted robocalls are a top consumer complaint at the Commission. It is estimated that American consumers received approximately 2.4 billion robocalls per month in 2016. One particularly pernicious category of robocalls is spoofed robocalls, in which the Caller ID is falsified, hiding the caller's true identity. Scammers use spoofing to disguise their identities, to trick consumers into answering unwanted calls, and to hide from authorities.

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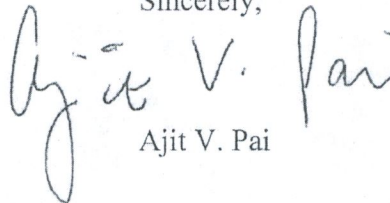
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

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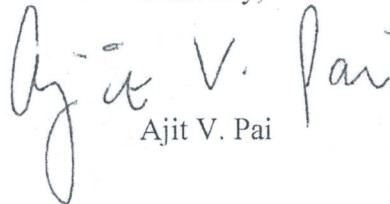
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Claire McCaskill
United States Senate
730 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator McCaskill:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

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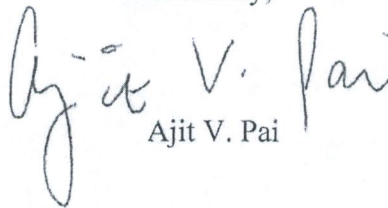
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Robert Menendez
United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Menendez:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

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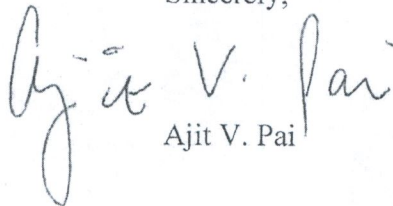
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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Jeff Merkley
United States Senate
313 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Merkley:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

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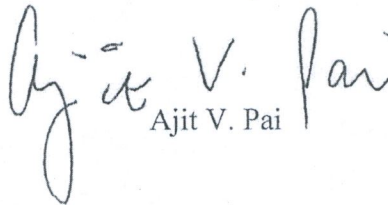
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Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Tom Udall
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Udall:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

Americans are suffering from a scourge of robocalls. As you note, each and every year, unwanted robocalls are a top consumer complaint at the Commission. It is estimated that American consumers received approximately 2.4 billion robocalls per month in 2016. One particularly pernicious category of robocalls is spoofed robocalls, in which the Caller ID is falsified, hiding the caller's true identity. Scammers use spoofing to disguise their identities, to trick consumers into answering unwanted calls, and to hide from authorities.

In order to better protect subscribers from illegal and fraudulent robocalls, I have circulated a Notice of Proposed Rulemaking to my fellow Commissioners that proposes to allow service providers to block illegal and fraudulent robocalls under certain circumstances, without fear of liability for failing to complete the calls. Specifically, the proposed rules, if adopted, would codify the FCC Consumer and Governmental Affairs Bureau's clarification in 2016 that providers are allowed to block spoofed robocalls when the subscriber to a particular telephone number requests that calls originating from that number be blocked (sometimes called "Do-Not-Originate"). The proposed rules would also permit providers to block spoofed robocalls when the caller uses an unassigned or invalid phone number. We are also seeking public input on how to address spoofing from internationally-originated numbers, where scammers too often manage to avoid U.S. legal process.

Additionally, I have proposed a Notice of Inquiry that would seek comment on whether and how to create a safe harbor that would protect consumers by allowing their providers to prevent fraudulent, illegal, or spoofed robocalls based on objective criteria. It would also seek comment on safeguards the Commission should establish to minimize blocking of lawful calls.

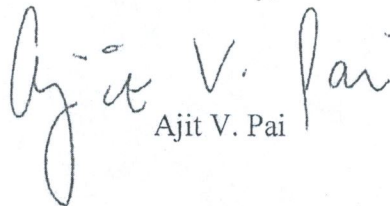
These proposals are tentatively scheduled for consideration at the Commission's upcoming Open Meeting on March 23, 2017. In accordance with my recent pilot project to bring more openness and transparency to the FCC, we have publicly released the draft text of this item

and a one-page fact sheet, each of which is available at <https://www.fcc.gov/news-events/events/2017/03/march-2017-open-commission-meeting>.

With respect to the *Broadnet* decision, I agree with you that that the previous Commission erred in finding that federal contractors are not “persons” subject to the TCPA. This conclusion is inconsistent with the text and structure of, and Congressional intent underlying, the TCPA. Moreover, as a policy matter, it gave federal contractors a special carve-out from those restrictions. (To be sure, federal contractors may be entitled to immunity from TCPA liability that derives from the government. Yet as I wrote in my dissent to this aspect of the *Broadnet* decision, I believe that’s a matter for the courts and Congress to decide—not the Commission.) We are now considering the Petition for Reconsideration, and in particular, the legal arguments advanced by various petitioners. As we do so, we will make every effort to ensure the Commission interprets the TCPA faithfully and in a way that doesn’t bestow regulatory largesse upon certain types of robocallers.

I appreciate your interest in this matter and I look forward to working with you as we pursue the common goal of protecting consumers from robocalls. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" being the most prominent part, followed by "V." and "Pai".

Ajit V. Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

March 7, 2017

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your inquiry about how the Commission intends to help protect consumers from intrusive robocalls. In your letter, you expressed concerns regarding the FCC's *Broadnet* Declaratory Ruling, which involved the application of the Telephone Consumer Protection Act (TCPA) to the federal government and its contractors.

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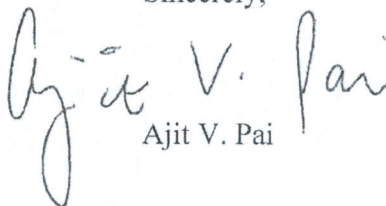
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